IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4388 of 2006

Date of Decision: 7.11.2006

Mohit Stone Crusher ...Petitioner

Vs.

Phool Singh & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr. Akshay Bhan, Advocate,
for the petitioner.

Mr.Shailendra Jain, Advocate,
for respondents No.1 to 5.

Vinod K.Sharma, J. (Oral)

Present revision petition under Article 227 of the Constitution of India has been filed for quashing the order dated 16.3.2006 passed by the learned Civil Judge (Senior Division), Jagadhri and order dated 19.7.2006 passed by the learned District Judge, Yamunanagar whereby the learned courts below have allowed the application for ad-interim injunction filed by the plaintiff-respondents.

The plaintiff-respondents had filed a suit for permanent injunction restraining the present petitioner from installing any machinery

for running and working any stone crusher for creating any public nuisance in the land measuring 46 kanals 9 marlas comprised in Khewat No.35, Khatauni No.62 bearing Khasra Nos. 14//12, 13, 14, 17, 18 and 19 total Kittey 6 or in any part thereof, situated in the revenue estate of village Koliwala, Hatbast No.60, Tehsil Chhachhrauli District Yamunanagar as per Jamabandi for the year 2002-03 either themselves or through their employees, agents, representatives forcibly and illegally or in any manner, whatsoever.

It was claimed by the plaintiff-respondents that they were permanent residents of Village Koliwala District Yamunanagar and that there was no stone crusher zone carved out by the State Government constituting the land in question. The petitioner i.e. M/s Mohit Stone Crusher purchased a piece of land comprised in Rect No.14, Khasra Nos. 12 and 19 on 21.2.2005 with an intention to install a stone crusher. It was claimed that the said activity would ultimately become cause for environmental hazard which shall tell upon the health of the inhabitants of village Koliwala. It was claimed that in case the petitioners were allowed to install a stone crusher at a distance of 150 yards from the abadi of the village then it would cause havoc to the nearby school run by the Red cross Society, and would affect the crops standing nearby the fields thereby causing danger to the health of the inhabitants of village Koliwala, their livestock and the standing crops.

The defendants in the reply filed to the suit claimed that the stone crusher was being installed in the stone crusher zone demarcated by the State Government and Pollution Control Board. It was claimed that no objection certificate was issued by the competent authority after obtaining

report of the Tehsildar of the area. It was claimed that the petitioners have already spent an huge amount of Rs.70 lacs on installation of crusher. It was also claimed that there was approximately one dozen stone crushers operating in that very zone. The stand of the petitioner further was that the stone crusher was installed at a safe distance from the abadi of village. The defendant-petitioners also took a stand that inhabited area of village Koliwala was in fact washed away in floods in river Yamuna and some inhabitants of village Koliwala have constructed houses in their own fields which does not make a compact abadi. The scattered houses therefore, could not be considered as village. It was also claimed that the houses were not constructed within the Lal Dora of village. It was further claimed that there is no environmental hazard.

The learned courts below by placing reliance on the judgment of Hon'ble Supreme Court in **M.C.Mehta Vs. Union of India 1992 SCC 256** as also notification dated 18.12.1992 issued by the Government of Haryana came to the conclusion that installing of stone crusher was actionable nuisance and was otherwise in violation of the law laid down by Hon'ble Supreme Court as well as the judgment passed by this Court and accordingly restrained the petitioners from installing and running stone crusher. Learned courts below also took note of the report conducted by the doctors of P.G.I., Chandigarh as filed in case **Ishwar Singh Vs. State of Haryana and others (1995-3) The Punjab Law Reporter 613** wherein it has been held as under:-

> " The air we breathe, is a mixture of nitrogen and oxygen with minor constituents like carbon dioxide and trape gases Pollutants are substances which are not normally

present in the air e.g. dust, smoke industrial and automobile exhaust, gaseous and particulate meter. Nature and amount of these pollutants vary from place to place depending upon population, vehicular density, location of industrial units etc. Lungs are the major organs affected by the Pollution because of the direct contact of the respiratory track with outside atmosphere. The spectrum of functional and pathological reactions of the lungs to various exposures is wide. Chronic bronchitis and airways obstruction is the result of long term exposure to air pollution. Exposure to many of the occupational and environmental pollutants can precipitate and/or aggravate asthma. Organic matter/dust can also cause other allergic reactions producing fibrosis. This produces respiratory disability and decreased work efficiency while anthracosic is common in coal mines, Silicosis occurs in those expose to the Silica dust namely the workers involved in mining, pottery and blasting. Exposure to dust may lower the long defence and clearing mechanizm, resulting in infections particularly tuberculosis. Some such occupational exposures may cause lung cancer as well."

Mr. Akshay Bhan, learned counsel for the petitioner has challenged the said findings of the learned courts below primarily on the ground that the Haryana State Pollution Control Board has issued no objection certificate/consent to establish on 19.11.2004 and therefore, the plaintiff-respondents could not seek injunction against the setting up of stone crusher which was being set up in accordance with law. He also

placed reliance on the report of Tehsildar Chhachhrauli District Yamunanagar which was to the following effect:-

> " It is certified that Khasra No.14//12/19/15/12 are situated in tehsil Chhachhrauli, District Yamunanagar and its distance from the national high way is more than 5 K.M. And from state High way is also 5 K.M., from District road its distance is 1 K.M. And from metropolitan District Yamunanagar. Its distance from District Headquarters is around 20 K.M. And city population is also at the distance of around 20 K.M. And village Debdhar is around at 3 K.M. Of the above said Khasra No. Tourist complex is also at the distance of 8 K.M. Government forest is also at the distance of 1 K.M. and the distance of water tank is also at about 2 K.M., Report is hereby presented."

He also placed reliance on the certificate issued by the Gram Panchayat, Bhudkalan to the effect that there were only 35 houses in village Koliwala and thus on the said basis the contention raised was that the learned courts below were wrong in coming to the conclusion that there was an actionable nuisance. Learned counsel for the petitioner placed reliance on the judgment of this Court in the case of **Anil Garg Vs. Dhingra Construction Company, 2000 (3) R.C.R. (Civil) 752** wherein it was held as under:-

> "10. After considering the rival contentions of the parties,I am of the considered opinion that this revision must fail because the petitioners have not been able to prove, prima facie, that the activities of the respondent are in violation of

the directions of the Hon'ble Supreme Court contained in **J.T. 1999 (5) S.C.18: 1999 (3) RCR (Civil) 652 (SC) (M.C.Mehta Vs. UOI),** which has been relied upon by the petitioners. The observations of the Hon'ble Supreme Court are that such like plants should not be installed unless NOC is obtained from the Board.

11. In the present case, it is, prima facie, established that the Board gave permission to the respondent before the installation of the plant. It cannot be said that the Board is acting in connivance with the respondent. It never showed any favour to the respondent. Rather, at one point of time, a show cause notice was issued to the respondent that the unit should be closed on the basis of the sample. In pursuance to the said notice,the respondent got installed one instrument with the help of which the pollution has decreased to 118mg/NM 3. At this stage, it cannot be said that the certificate issued by the Board is a fabrication or a false document or it is a procured document. Even otherwise, the balance of convenience does not lie in favour of the petitioners. The respondent has installed the industry after taking necessary permission from the concerned authority. The respondent has spent a huge amount. There is no evidence on the record, prima facie, to show that the crops of the petitioners have withered away on account of pollution or any labourer of the petitioner has suffered any disease on account of the smoke emitted from the chimney of the

factory of the respondent. Further,the petition cannot be allowed in view of the fact that petitioners have efficacious remedy by way of approaching the Board."

Thus, by relying upon the above judgment it was claimed that the impugned orders cannot be sustained.

Mr. Shailender Jain, Advocate, appearing for the respondents vehemently argued that the orders passed by the courts below were in consonance with the judgment of Hon'ble Supreme Court in the case of **M.C.Mehta Vs. Union of India JT 1992 (4) SC 46** wherein it was held as under:-

" (1) The mechanical stone crushers established/operating in Lal Kuan, Anand Parbat, Rajokri, Tughtakabad and in any other area of Union territory of Delhi shall stop operating/functioning with effect from August 15, 1992.No stone crusher shall operate in the Union territory of Delhi from August 15, 1992 onward.

(2) The mechanical stone crushers established/operating in Suraj Kund, Lakhanpur, Lakkarpur, Kattan, Gurukul, Badkhal, Pallinangla, Saraikhaja, Anangpur and Ballabgarh areas of Haryana shall stop operating/functioning with effect from August 15,1992. No stone crusher shall operate in the above said area from August 15, 1992 onward.

(3) The writ petitions filed by the owners/proprietors of stone crushers in Delhi High Court which have been transferred to this Court shall stand dismissed with no order as to costs.

(4) The stone crushers in the Union territory of Delhi/Faridabad-Ballabgarh Complex which do not have valid licences from the Authorities under the Delhi Municipal Corporation Act, 1957/Faridabad Complex Administration (Regulations and Development) Act, 1971 or from any other authority which the law requires, shall stop functioning and operating with immediate effect.

(5) The stone crushers, in respect of which closure-orders/directions have been issued by the Central Pollution Control Board under Section 31A of Air (Prevention and Control of Pollution) Act, 1981 or by the Central Government under Section 5 of the Environment (Protection) Act 1956, shall stop functioning/operating with immediate effect.

(6) The Delhi Development Authority through its Vice Chairman and Commissioner (Planning), the Delhi Municipal Corporation through its Commissioner, Faridabad Complex Administration through its Chief Administrator, Director Town and Country Planning Department, Haryana, Deputy Commissioner Faridabad, Haryana Urban Development Authority through its Commissioner/Chief Executive Central Pollution Control Board through its Member Secretary, Central Government under the Environment (Protection Act) 1986 and the Commissioner Police Delhi are directed to ensure the compliance of our above orders.

(7) The officers of the Town and Country Planning Department, Government of Haryana, who were present in Court, informed us that a new "crusher zone" has been approved at village Pali and the lay out plan has been prepared and is in the process of demarcation by the Haryana Urban Development Authority. The said "crusher zone" has been set up with the object of rehabilitating the existing stone crushers who are being stopped from functioning as a result of our orders. We, therefore, direct the State of Haryana through the Director, Town and Country Planning Department, Haryana, Chandigarh,the Chief Administrator Faridabad Complex Administration, the Deputy Commissioner Faridabad and the Haryana Urban Development Authority to demarcate,and allot the sites to the stone crushers mentioned in paras 1,2, 4 and 5, above by draw of lots or by any other fair and equitable method. We further direct these authorities to provide additional land in or around the "crusher zone" if there is not sufficient land in the said zone to accommodate all the stone crushers affected by our orders. This exercise shall be completed and plots offered to the stone crushers within the period of six months from today. The Director, Town and Country Planning Department, Haryana, Chandigarh is further directed to send a progress report to the Registry of this Court before July 31,1991 in this respect.

(8) We make it clear that our orders contained in paras

1,2,4 and 5 above are in absolute terms and are not dependent or consequential to our directions in para 7 above."

Learned counsel for the respondents also placed reliance on Section 3 (2) (v) of the Environment (Protection Act) 1986 to contend that no industry in violation of the provisions of the said Act can be allowed to run. Learned counsel for the respondents further submitted that in exercise of the powers conferred with Section 5 of the Environment (Protection Act) 1986 read with Government of India Ministry of Environment and Forests, Department of Environment, Forests and Wildlife Notification No. S.O. No. 152 (E), dated the 10th February, 1988 and in pursuance of the provisions of section 7 of the said Act and rule 4 Environment (Protection Act) 1986 and in supersession of the Environment Department, Notification No.S.O. 81/C.A.1986/S. 5 & 7/92, dated the 9th June, No.S.O. 94/C.A. 1986 S.5 & 7/92, dated the 4th August, 1992, No.S.O. 78/C.A. 1986 S.5 & 7/92, dated the 24th November, 1992, No.S.O. 152/C.A. 1986 S.5 & 7/92, dated the 7th December, 1992, No.S.O. 155/C.A. 1986 S.5 & 7/92, dated the 18th December, 1992, No.S.O. 33/C.A. 1986 S.5 & 7/93, dated the 8th January, 1993. No.S.O. 33/C.A. 29/86/S.5 & 7/97, dated the 18th March, 1997, and No.S.O. 56/C.A.29/1986 S.5 & 7/97, dated the 11th July, 1997, the Government of Haryana have issued a notification in the Haryana Government Gazette dated 18.12.1997 laying down non-set up of stone crushers in Haryana which reads as under:-

"SCHEDULE 1

NORMS FOR SITTING OF STONE CRUSHERS IN HARYANA

NORMS

Sr. No.	CRITERIAL	DISTANCE IN K.M.
1.	2.	3.
1.	Minimum distance required from the nearest National Highway.	...1.5
2.	Minimum distance required from the nearest State Highway	...1.0
3.	Minimum distance required from the nearest Major District roads and other roads.	...0.3
4.	Minimum distance required from the nearest Metro Politan Cities.	...5.0
5.	Minimum distance required from the nearest Head Quarter.	...3.0
6.	Minimum distance required from the nearest town abadi.	...1.5
7.	Minimum distance required from the nearest village abadi.	...1.0
8.	Minimum distance required from the nearest tourist complex.	...1.5
9.	Minimum distance required from any kind recorded as forest in Government record.	...1.0
10.	Minimum distance required from any controlled area	...1.0
11.	Minimum distance required from approved water supply of 20 kilo liter capacity.	...1.5
12.	Minimum distance required from any indoor treatment unit catering to 25 or more indoor patients.	...1.0
13.	Minimum distance required from Surajkund and	...2.0
14.	Minimum distance required from notified bird sanctuaries”	...2.0

Learned counsel for the respondents, thereafter, submitted that

the report given by the Tehsildar which is the basis for issuance of a 'No objection Certificate' is based on wrong facts. Learned counsel for the respondents submitted that village Koliwala is very much in existence and stone crusher being set up is contrary to the norms laid down in the notification referred to above. In support of this contention, learned counsel for the respondents further made reference to the report of the Local Commissioner which reads as under:-

> " I prepared the rough site plan showing distance of abadi deh of village Kouliwala and Rohit Stone crusher. I, got measured the distance from abadi deh to the above stone crusher with the help of inchi tape and I found that stone crusher which exists towards Eastern side of Kouliwala is at a distance of 650 ft. There exists a Kacha Gohar towards Eastern side of abadi of Village Kouliwala, which is 100 ft. away and thus from the Gohar the distance of Stone Crusher is 550 ft. whereas total distance from Village abadi is 650 ft."

Learned counsel for the respondents also placed reliance on the receipt of Chulah tax showing that village Kouliwala was inhibited of residence.

I have heard Shri Akshay Bhan, learned counsel for the petitioner and Shri Shailendra Jain, learned counsel for the respondents and find no force in the contentions raised by the learned counsel for the petitioner.

The report of the Local Commissioner shows that the site of stone crusher is only at a distance of 650 ft. from the abadi of village,

whereas according to the notification issued by the Haryana Government minimum distance required from the village abadi is 1 K.M. Thus, prima facie the site selected for setting up of a stone crusher is contrary to the notification dated December 18, 1997 and therefore, the learned courts below have rightly issued injunction in favour of the respondent-plaintiffs. Nothing has been brought on record to show as to how the site is within the crushing zone as established by the State Government. The reading of the report of Tehsildar further shows that abadi of village Koliwala village has not been taken into consideration while calculating the distance of the stone crusher.

Therefore, the learned courts below have rightly come to the conclusion that the plaintiff-respondents had a prima facie case and further setting up of the stone crusher at the site selected would be health hazard to the inhabitants and also to livestock. Therefore, I find no illegality in the impugned orders passed by the learned courts below which may warrants by this court in exercise of revisional jurisdiction under Article 227 of the Constitution of India.

Accordingly, the revision petition is dismissed.

However, keeping in view the fact that the petitioners have made huge investment in pursuance to the no objection certificate/consent having been given by the Pollution Board for setting up of stone crusher, it is directed that the main suit be expeditiously disposed of preferably within six months from the date of the receipt of the copy of this order.

(Vinod K.Sharma)
Judge

November 7,2006
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